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August, directed a broker to buy for him shares of the value of about £800, and entered the purchase in his investment ledger. On the 27th August the broker, who was an intimate friend of the donor, called at his house to ask to whom the shares should be transferred, and the donor, who was then very ill, and unable to see him, sent a message by his wife that the shares were to be put in her name, and her name was accordingly given by the broker to the vendor's broker as that of the transferee. The donor died on the 28th August, the shares not having been at that time actually transferred. It was held, however, that as far as the donor was concerned the gift was complete, and it was therefore upheld. Compare with this *Sherratt v. Merchants Bank of Canada*, 21 A. R. 473."

See *First Nat. Bank v. Holland*, ante, p. 204.

VOLUNTARY SOCIETIES—RELATIONS OF MEMBERS—LEASE—TRUST.—Defendant was a member of an unincorporated tennis club, which used as a tennis ground a certain lot by sufferance of the owner. Defendant subsequently organized another tennis club, and in his own name procured a lease of the ground in question for the exclusive use of the rival club. In a suit brought on behalf of the original club to have defendant declared a trustee for the plaintiff club, it was *Held*, that the familiar doctrine that where an agent secretly procures a lease of premises occupied by his principal, or a partner takes a similar advantage of his co-partners, a constructive trust will be declared, does not apply to a member of a voluntary association, who is not himself an officer. *Limbard v. Grant* (N. Y. Sup.), 71 N. Y. Supp. 459. The decision is doubtful. A member of a voluntary association, by virtue of his membership, becomes familiar with the business affairs of the association, and should not be permitted to secretly obtain an advantage from the relation. The case becomes clearer if we imagine a member of a church, which occupies a leased building, secretly leasing the church building, and endeavoring to dispossess the congregation of which he is a member.

REAL ESTATE BROKERS—COMMISSIONS.—A broker, through whose efforts a binding contract for land is made between his principal and owner of the land, is held in the case of *Roche v. Smith* (Mass.), 51 L. R. A. 510, to have earned his commission, although the owner cannot make good title because of incumbrances not known to the broker. The remedy of the principal is held to be against the vendor.

The case of *Crockett v. Grayson*, 98 Va. 354, involved the right of a real estate broker to commissions. The decision was against the broker, although he found a purchaser willing and able to buy at the agreed price—the sale having fallen through by reason of the state of the vendor's title. Nor, as held, was the case altered by the fact that the vendor made false representations to the proposed purchaser with reference to the condition of the title, thus inducing him to enter into a contract of purchase conditioned upon the truth of such representations. The purchaser repudiated the purchase after discovering the falsity of the representations. The case was probably decided right. The decision would doubtless have been otherwise had the false representations been originally made to the broker, instead of subsequently to the proposed purchaser. If, for example, the principal had represented to the broker that his land was free from incumbrances,

or that his title was perfect, knowing the fact to be otherwise, and a purchaser found by the broker had entered into a contract of purchase at the stipulated price, conditioned on the state of the title being as described, then doubtless the broker would have been entitled to his commissions, although the purchaser afterward repudiated the purchase because of defect of title.

PAUPER CRIMINALS—ASSIGNMENT OF COUNSEL—RIGHT OF PRISONER TO SELECT.—In *People v. Fuller* (N. Y. Sup.), 71 N. Y. Supp. 487, the interesting question arose, under the New York statute authorizing the court to assign counsel to pauper criminals, whose compensation is to be paid by the county, whether the accused might have the selection of such counsel, willing to serve, or whether the assignment was wholly in the discretion of the court. It was *Held*, That the criminal had no voice in the selection, and the court might disregard his preference, and make its own selection of counsel. That the court's ruling was founded in good reason appears from the following extract from the opinion:

"This change in the law has not unreasonably caused the assignment in such cases to be eagerly sought for, and, in some instances, through means not above reproach. It seldom happens that a defendant is arraigned, charged with murder in its first degree, without many applications for such assignment being made to the judge before whom the arraignment is had, by counsel claiming previous retainer or especial familiarity with the case, or claiming to represent the wishes of the accused or his family, or some other equally cogent reason. It has, indeed, been a matter of common rumor that zealous 'counsel' have sometimes offered to divide their prospective fees with the family and friends of the accused, in consideration of their inducing the accused to ask the court for their assignment as counsel. The accused, in prison, and with a relatively limited acquaintance as to the capability and suitability of counsel, and oppressed, as he is, with the gravity of his situation, is often but poorly able to choose or recommend. It is the plain duty of the court to protect the defendant from such improper influences; and to permit him, under these circumstances, to suggest counsel to be assigned by the court, and to be paid by the State, is to open the door to such grave abuses that I am unwilling to encourage it. There is doubt whether a defendant able to retain and pay his own counsel will ever do so if he knows that upon his application the court will assign, and the State pay them. It follows, therefore, that if the court is to assign counsel, it should do so free from any prompting or suggestion whatsoever either by the defendant or by counsel desiring such assignment. The defendant is wholly free to select his own counsel, but if the court is to assign, and the State is to pay, then the independent selection by the court, by removing the temptation, will prevent the improper solicitation of such assignments by means both despicable and unprofessional, and will, at the same time, permit the assignment in proper cases of counsel who are eminent, able, and honorable. If, in an isolated case, this rule should possibly work hardship, it is clear to my mind that it will, in the end, result to the great advantage of the accused, the community, and the bar. I may add that no reflection is intended nor entertained as to the two counsel whom I asked to assign in this particular case, and this memorandum is written that they may know why I deny this application, and that the bar may know my views for their future guidance."